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APPLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AMANDA FRLEKIN, AARON GREGOROFF, SETH DOWLING, DEBRA SPEICHER; AND TAYLOR KALIN.

Plaintiffs,

V.

APPLE INC.,

Defendant.

Case No. 13cv03451 WHA

**DECLARATION OF TODD K. BOYER IN
SUPPORT OF DEFENDANT APPLE
INC.'S MOTION FOR SUMMARY
JUDGMENT**

Date: November 5, 2015

Time: 8:00 a.m.

Judge: Hon. William H. Alsup

Courtroom: 8

Consolidated Complaint Filed: February 2, 2015
Trial Date: January 26, 2016

1 I, Todd K. Boyer, declare as follows:

2 1. I am an attorney at law duly admitted to practice before the courts of the State of
3 California and the United States District Court, Northern District of California. I am a Shareholder
4 at the law firm of Littler Mendelson, A Professional Corporation, counsel of record for Defendant
5 Apple Inc. (“Apple”) in the above captioned matter. Based on my personal knowledge and my
6 review of relevant records and documents in this matter maintained and received in the course of my
7 law firm’s regular business practices, I could and would testify to the facts set forth in this
8 declaration if called upon to do so in any court of law.

9 2. Attached hereto as **Exhibit A** is a true and correct copy of the Court-approved class
10 notice which was distributed to the class members in this case.

11 3. Attached hereto as **Exhibit B** is the Employee Package and Bag Searches Policy
12 published in 2011 and produced to Plaintiffs as Bates Number APL-FRLEKIN_00002192.

13 4. Attached hereto as **Exhibit C** is the Employee Package and Bag Searches Policy
14 published on January 24, 2013 and produced to Plaintiffs as Bates Number APL-
15 FRLEKIN_00002398.

16 5. Attached hereto as **Exhibit D** is the Employee Package and Bag Searches Policy
17 published on July 1, 2013 and produced to Plaintiffs as Bates Number APL-FRLEKIN_00002417.

18 6. Attached hereto as **Exhibit E** is the Employee Package and Bag Searches Policy
19 published on July 31, 2013 and produced to Plaintiffs as Bates Number APL-FRLEKIN_00002436.

20 7. Attached hereto as **Exhibit F** is the Employee Package and Bag Searches Policy
21 published on October 9, 2013 and produced to Plaintiffs as Bates Number APL-
22 FRLEKIN_00002455.

23 8. Attached hereto as **Exhibit G** is the Employee Package and Bag Searches Policy
24 published on July 30, 2014 and produced to Plaintiffs as Bates Number APL-FRLEKIN_00052671.

25 9. Attached hereto as **Exhibit H** is the Employee Package and Bag Searches Policy
26 published on November 19, 2014 and produced to Plaintiffs as Bates Number APL-
27 FRLEKIN_00052994.

28 10. Attached hereto as **Exhibit I** is the Employee Package and Bag Searches Policy

1 published on December 18, 2014 and produced to Plaintiffs as Bates Number APL-
 2 FRLEKIN_00047107.

3 Non-Store Leader Putative Class Member Declarations

4 11. Attached hereto as **Exhibit J**, entitled “Compendium of Non-Store Leader Putative
 5 Class Member Declarations Obtained by Apple,” are true and correct copies of declarations obtained
 6 by Apple from non-Store Leader putative class members along with the executed voluntary consent
 7 form for each declarant. All declarations submitted herein were produced to Plaintiffs prior to the
 8 close of discovery, which was March 16, 2015. The declarations attached as **Exhibit J** are as
 9 follows in alphabetical order:

- 10 a. Declaration and executed voluntary consent form of Lisa Abequa is found after **Tab J-1**.
- 11 b. Declaration and voluntary consent form of Stefan Arnold is found after **Tab J-2**.
- 12 c. Declaration and voluntary consent form of Kyle Boggs is found after **Tab J-3**.
- 13 d. Declaration and voluntary consent form of Jaqqwon Burgess is found after **Tab J-4**.
- 14 e. Declaration and voluntary consent form of Natasha Eljurdi is found after **Tab J-5**.
- 15 f. Declaration and voluntary consent form of John Fossett, Jr. is found after **Tab J-6**.
- 16 g. Declaration and voluntary consent form of Heather Hart is found after **Tab J-7**.
- 17 h. Declaration and voluntary consent form of Eric Kinder is found after **Tab J-8**.
- 18 i. Declaration and voluntary consent form of Sam Lam produced is found after **Tab J-9**.
- 19 j. Declaration and voluntary consent form of James Lawson is found after **Tab J-10**.
- 20 k. Declaration and voluntary consent form of Pete Ljepava is found after **Tab J-11**.
- 21 l. Declaration and voluntary consent form of Ryan Long is found after **Tab J-12**.
- 22 m. Declaration and voluntary consent form of Cameron McChesney is found after **Tab J-13**.
- 23 n. Declaration and voluntary consent form of Christopher Moran, Jr. is found after **Tab J-14**.
- 24 o. Declaration and voluntary consent form of Brian Moseley is found after **Tab J-15**.
- 25 p. Declaration and voluntary consent form of Ellyse Pinney is found after **Tab J-16**.
- 26 q. Declaration and voluntary consent form of Rayne Puerto is found after **Tab J-17**.
- 27 r. Declaration and voluntary consent form of Janelle Robinson is found after **Tab J-18**.
- 28 s. Declaration and voluntary consent form of Anthony Schneider is found after **Tab J-19**.

- t. Declaration and voluntary consent form of Tyler Viviano is found after **Tab J-20**.
 - u. Declaration and voluntary consent form of Adam Wolin is found after **Tab J-21**.

Compendium of Store Leader Declarations

12. Attached hereto as **Exhibit K**, entitled "Compendium of Store Leader Declarations," are declarations from individuals currently holding the position of Apple Store Leaders discussing bag and technology check practices in their respective stores. For Store Leaders who are putative class members, Apple produces the declaration and the executed voluntary consent form for each declarant. For those Store Leaders who are not putative class members, Apple produces the declaration only. All declarations submitted herein were produced to Plaintiffs prior to the close of discovery, which was March 16, 2015. The declarations attached as **Exhibit K** are as follows in alphabetical order:

- a. Declaration of Tyrone Miles is found after **Tab K-1**.
 - b. Declaration of Tom Montanez is found after **Tab K-2**.
 - c. Declaration of Jeannine Nittner is found after **Tab K-3**.
 - d. Declaration and voluntary consent form of Casey Shull is found after **Tab K-4**.
 - e. Declaration of Brenden Watumull is found after **Tab K-5**.
 - f. Declaration of Jody Yorkey is found after **Tab K-6**.

Additional Testimonial Evidence Submitted Herewith

13. Attached hereto as **Exhibit L** are true and correct copies of the relevant excerpts of the transcript of the deposition of Plaintiff Seth Dowling taken on November 22, 2013.

14. Attached hereto as **Exhibit M** are true and correct copies of the relevant excerpts of the transcript of the deposition of Plaintiff Amanda Frlekin taken on November 20, 2013.

15. Attached hereto as **Exhibit N** are true and correct copies of the relevant excerpts of the transcript of the deposition of Plaintiff Deborah Speicher taken on November 21, 2013.

16. Attached hereto as **Exhibit O** are true and correct copies of the relevant excerpts of the transcript of the deposition of Plaintiff's declarant Ivan Guzman taken on March 13, 2015.

17. Attached hereto as **Exhibit P** are true and correct copies of the relevant excerpts of the Reporter's Transcript of the hearing on Plaintiffs' Motion for Rule 23(c)(4) Certification of

1 Particular Issues which took place before this Court on July 2, 2015.

2 18. Apple's expert, Randolph Hall, PhD, reviewed video evidence in the preparation of
 3 his report, which was served on March 30, 2015. A true and correct copy of Dr. Hall's Declaration
 4 and Report ("Hall Report") is attached hereto as **Exhibit Q**.

5 19. On March 12, 2015, prior to the close of discovery, Steve Smith, Apple's Senior
 6 Manager, Global Loss Prevention Operations, authenticated the store level video, which was
 7 produced to Plaintiffs on February 27, 2015, Bates Numbered APL_FRLEKIN_00057395-57400.
 8 Steve Smith's declaration and the authenticated video was provided to Dr. Hall to assist in the
 9 preparation of his report. A true and correct copy of Steve Smith's declaration, all of the video
 10 provided to Dr. Hall to prepare his report which is Bates labeled APL_FRLEKIN_00057395-57400
 11 is attached as Exhibit C to the Hall Report. Some of the raw video authenticated by Mr. Smith
 12 contains a time and date stamp, which is the original, video system-generated time and date stamp.
 13 (See Exhibit C to Hall Report and within Exhibit C to the Hall Report, see Declaration of Steve
 14 Smith, Exhibit A, ¶ 14.) The system generated stamp is only viewable when viewing the video
 15 through QuickTime for Windows (available here: www.apple.com/quicktime/download). The raw
 16 video is viewable on either a Mac (without the time stamp) or on a Windows PC using QuickTime.
 17 The video is organized in folders indicating the date and time range for the video contained within
 18 each folder.

19 20. A true and correct copy of the excerpts of the video that Dr. Hall references in the
 20 Hall report is attached hereto as **Exhibits R and S**. **Exhibit R** are those video clips referenced on
 21 Page 10, 11, and 12 of the report and **Exhibit S** are the video clips referenced in Appendix II of the
 22 report entitled "Example Observations From The San Francisco Store." A caption has been added in
 23 the lower left hand corner of the video that indicates the particular Apple Store the video was taken
 24 from as well as the date and time of the video.

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1 I declare under penalty of perjury under the laws of the United States and the State of
2 California that the foregoing is true and correct. Signed and dated on October 1, 2015 in San Jose,
3 California.

4 //s// Todd K. Boyer
TODD K. BOYER

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